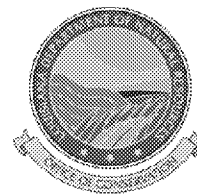


## Louisiana Department of Natural Resources

### Injection and Mining Division

Class VI Rule Promulgation – Public Comments and Agency Response  
December 9, 2020

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#### **Comment 1 – LMOGA**

Miscellaneous Wording: To ensure clarity, LMOGA recommends changing the wording in paragraph 609.C.5.a from “submitted a plugging and abandonment report” to “submitted a Well Closure Report and complied with closure and post-closure requirements according to paragraph 633.” LMOGA also recommends adding a definition of Well Closure Report to these rules.

**Comment 1 LDNR Response:** The Louisiana Department of Natural Resources (LDNR) has noted the comment and the suggested changes will be considered in future rule-making.

#### **Comment 2 – LMOGA**

Reporting Requirements: There appears to be a discrepancy between a reporting deadline in the EPA rules compared to the Department’s proposed rules. Specifically, the 14-day reporting requirement specified in the proposed paragraph 609.L.5 is shorter than the 30-day period outlined in the corresponding EPA rule at 40 CFR 144.51(I)(5).

A 14-day reporting requirement presents somewhat of a challenge, and LMOGA respectfully requests that the Department would consider making this requirement 30 days to reflect the requirement in the EPA rule.

**Comment 2 LDNR Response:** LDNR has noted the comment and the suggested changes will be considered in future rule-making.

#### **Comment 3 – Environmental Defense Fund**

Liability Management: CCS projects are long-lived, and Class VI requires an extended period of post-site care and monitoring. Many proponents of CCS, especially equity investors, are eager to derisk these projects through statutory elimination of liability, or transfer of liability to taxpayers.

EDF is concerned about this socializing of CCS liability for several reasons.

First, the risk of liability acts as a powerful motivator for high quality operations. Project developers who do not face commensurate consequences for negligent behavior will tend to behave negligently to save money. Elimination or transfer of liability introduces a moral hazard that potentially endangers workers, community members, and the environment.

Second, elimination or transfer of liability creates a rhetorical contradiction for CCS proponents who claim that the activity is well understood and safe, while simultaneously lobbying to escape from liability in case something goes wrong – this mixed message is absorbed by the public and creates skepticism about the reliability of CCS, which can be quite damaging in these early stages of widespread rollout.

Liability management is outside the scope of Class VI primacy, but is nevertheless an essential component of a state’s overall CCS regulatory program. Since 2009, Louisiana has had statutory provisions addressing liability arising from CCS projects at La. R.S. §§ 30:1109-1111. EDF supports

strengthening this system to hold operators more responsible for the consequences of their actions. However, had the Louisiana legislature adopted language proposed in early 2020 eliminating operator liability arising prior to the issuance of a certificate of completion of injection operations and eliminating the cap on operator liability release pegged to the solvency of the Carbon Dioxide Geologic Storage Trust Fund, EDF would not have been able to support CCS in Louisiana.

**Comment 3 LDNR Response:** LDNR certainly recognizes the importance of long-term liability management associated with CCS projects. As mentioned in the comment, the purview of the proposed rule does not extend to liability release and any changes to the current structure of liability management would require statutory changes. Therefore, no change to the proposed rule is warranted.

#### **Comment 4 – Environmental Defense Fund**

Agency resources and staff training: Louisiana policymakers are well aware that Class VI permitting and oversight is a resource-intensive activity, requiring a well-funded and well-trained regulator to facilitate safe and secure project development. Class VI oversight requires, for example, extensive modeling efforts outside the current scope of the Department of Natural Resource’s workstream. The expected implementation costs that the DNR provides in its Notice of Intent are commensurate with estimates by the Ground Water Protection Council. EDF agrees with the Department that federal grants will be needed, especially in the early years while industry funding of oversight ramps up, to develop the regulatory program, and supports appropriations to make this happen at sufficient scale.

In particular, EDF supports the Department of Natural Resources’ efforts to hire and train staff for Class VI permitting, modeling, inspections, and other oversight needs. Given the self-imposed short timelines for the Department to evaluate an application’s completeness and then approve applications after the closure of public comment periods, it is especially important for the Department staff to be adequately trained and resourced to react quickly, knowledgeably and effectively on permitting decisions.

**Comment 4 LDNR Response:** LDNR concurs with this comment. Staffing and funding are not included within the scope of the proposed regulations. Therefore, no change to the proposed rule is warranted.

#### **Comment 5 – Environmental Defense Fund**

Scope of Protection: EPA’s Class VI program, as part of the Safe Drinking Water Act, is focused on the protection of Underground Sources of Drinking Water. While the Department of Natural Resources’ proposed language is consistent with this mandate, Wyoming’s recently approved Class VI primacy application extends the scope of protection, and emphasizes in at least seventeen different places that its rules are intended to protect human health, safety, and the environment in addition to USDWs.<sup>1</sup> While the concept of regulating to safeguard human health, safety and the environment is not absent from the Department’s proposal, these issues are surely central to the Department’s approach, and the Department should take this opportunity to add language similar to that used by Wyoming in its rules.

**Comment 5 LDNR Response:** LDNR concurs with the importance of protecting human health, safety, and the environment. The Louisiana State Constitution in Article IX, Section 1, mandates that the natural resources of the state “shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” Although these protections are only explicitly stated in LAC 45:XVII.603.H.4 of the proposed rule, they are already enumerated in the mission of the LDNR as laid out in the Louisiana Constitution.